SUPREME COURT OF THE UNITED STATES.

No. 280.

THE UNITED STATES, APPELLANTS,

vs.

SIMEON HART.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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1 In the district court of the United States for the third judicial district of the Territory of New Mexico.

UNITED STATES OF AMERICA, *Territory of New Mexico:*

Be it remembered, that on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-five, that Theodore D. Wheaton, esq., district attorney of the United States for the Territory of New Mexico, filed with the clerk of this court a libel, which is in the words and figures following, to wit:

Libel.

Third judicial district, in the district court of the United States for said Territory and district, at the November term, A. D. 1865.

UNITED STATES OF AMERICA, *Territory of New Mexico:*

UNITED STATES

vs.

REAL ESTATE consisting of lands, flouring mills, dwelling houses, corrals, stables, &c., situated in the county of El Paso, State of Texas, the property of Simeon Hart.

Be it remembered, that Theodore D. Wheaton, district attorney for the United States aforesaid, who prosecutes for the United
2 States, comes before the hon. court at the term aforesaid, and on the part of the United States shows to the hon. court, and gives the hon. court to understand and be informed, that Simeon Hart, of the county of El Paso, and the State of Texas, within the jurisdiction of the district court aforesaid, heretofore, to wit, on the 1st day of March, in the year of our Lord one thousand eight hundred and sixty-two, within the jurisdiction of the district court aforesaid, then and there a citizen of the United States, and rightly subjected to the authority and laws thereof, was seized and possessed of certain lands, houses, flouring mills, &c., in the county of El Paso, State of Texas, known and described as follows, viz:

A certain tract of land situated about one mile and a half in a westerly direction from the town of Franklin, El Paso county, State of Texas, on the Rio Grande, with a flouring mill, dwelling houses, corrals, ranch houses, stables, and other buildings thereon, together with all machinery attached to and used in the running of said mill, and all the privileges thereunto belonging. Said property is known as "Hart Mills."

Also a certain tract of land adjoining said town of Franklin, Texas, on the west, and containing 320 acres, and known as survey No. 9.

Also a certain tract of land situated in El Paso county, State of Texas, adjoining tract on which is situated "Hart's mills,"
3 on the west, containing 1,156 acres, and known and recorded as survey number 10.

Said property mentioned and referred to in the information herein laid is known as the property of Simeon Hart, which said real estate,

since that time and after the committing of the several unlawful acts hereinafter alleged to have been committed by the said Simeon Hart, has been seized by the marshal of the United States for said Territory of New Mexico, and is still in his custody and possession. The libellant would further propound and show to the hon. court that the said Simeon Hart, afterwards, to wit, on the day and year first aforesaid, within the jurisdiction of the district court aforesaid, and also on divers other days and times, from that time to the filing of this libel, being then and there a citizen of the United States, and subject to the authority and laws of the said United States, being engaged in an armed rebellion against the said government of the United States, commenced and set on foot within the jurisdiction of said district court, consisting of some two thousand men, and commanded by one Henry H. Sibley, has not ceased to countenance said rebellion, nor has he returned to his allegiance to the said United States, although public warning and proclamation has been duly given and made by the President of the United States to that effect, as by reference to the same, dated the 25th of July, in the year of our Lord one
4 thousand eight hundred and sixty-two, will more fully appear.

And the libellant would further show and propound to the hon. court, that the said Simeon Hart, afterwards, to wit, on the day and year first aforesaid, within the jurisdiction of the district court aforesaid, having been engaged in aiding and abetting said armed rebellion by buying, selling, freighting, trading, and trafficking to and with, and by furnishing counsel, personal service, and supplies of all kinds to the persons there employed, has not ceased to aid and assist said rebellion, nor has he returned to his allegiance to the United States, although public warning and proclamation has been made by the President of the United States as aforesaid to that effect. The libellant would further propound and show to the hon. court, that the said Simeon Hart, of the county and State aforesaid, on the day and year first aforesaid, and during other days and times from thence hitherto, having been engaged in a certain other armed rebellion against the government of the United States, to wit, an armed invasion of the said Territory of New Mexico, consisting of some two thousand men, and afterwards set on foot and carried on by the so-styled Confederate States of America, has not ceased to countenance said rebellion, nor has he returned to his allegiance to the said United States, although public warning and proclamation has been duly given and made as aforesaid.

5. And the libellant would further propound to the hon. court that the said Simeon Hart afterwards, to wit, on the day and year first aforesaid, at the district aforesaid, being engaged in aiding and abetting an armed rebellion last aforesaid, with personal service, criminal information, and supplies of all kinds, has not ceased from thence hitherto so to aid and abet said last named rebellion, nor has he returned to his allegiance to said United States, although public warning and proclamation has been made and given by the President of said United States to that effect, as aforesaid; all of which acts and doings of said Simeon Hart being contrary to the statutes of the

United States in such cases made and provided, whereby, and by form in such case made and provided, the said above described real estate and property has become justly forfeited to the United States, and the libellant would further show and propound unto the hon. court that a decree of condemnation and confiscation of right be entered against said above-described property, and that proceedings be had according to the act of Congress of the United States, approved July 17, 1862, that proceeding and proclamation be had, and that a decree of sale ordered that such disposition be made of the proceeds thereof as to the hon. court may seem just and proper in the premises on the part of the United States.

(Signed) THEODORE D. WHEATON,
U. S. District Attorney.

6 And afterwards, to wit, on the day and year aforesaid, the clerk of said court issued the following monition, which is in words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

To the marshal of said Territory, greeting:

Whereas, certain property known and described as follows, to wit:

U. S. marshal's proclamation.

UNITED STATES OF AMERICA,
3d Judicial District of the Territory of New Mexico, ss:

I, Abraham Cutler, marshal of the United States for the Territory of New Mexico, do hereby give public notice that in the case of—

THE UNITED STATES, libellant,

against

THE PROPERTY of Simeon Hart, viz: a certain tract of land situated about one mile and one half in a westerly direction from the town of Franklin, El Paso county, Texas, on the Rio Grande, with a flouring mill, dwelling houses, corrals, ranch houses, stables, and other buildings thereon, together with all the machinery attached to and used in running the mill thereon, and all the privileges thereunto belonging known as Hart's mill.

Also a certain tract of land adjoining said town of Franklin
7 Texas, on the west, containing 320 acres, and known as survey No. 9.

Also a certain tract of land adjoining upon the west, the tract upon which is situated "Hart's mills," containing 1,150 acres, and known and recorded as survey No. 10.

Also a deed of trust in and to a certain tract of land situated near said town of Franklin, upon which are buildings known as Skillkorn's blacksmith shop and residence, with all the improvements

thereon, as per deed of conveyance from William T. Smith to Skillkorn, dated March 23d, 1857, all situated in the county of El Paso, and State of Texas.

Situated in the county of El Paso, and State of Texas, and within the jurisdiction of the district court of the United States for the 3d judicial district of the territory of New Mexico, has been seized by the marshal of said Territory, and that on the 23d day of September, A. D. 1865, the hon. district attorney of the United States for said Territory, prosecuting on the part of the United States, filed in the clerk's office of said district court a libel, stating and alleging that Simeon Hart, on the first day of March, A. D. 1862, and until the filing of said libel, was seized and possessed with the property above mentioned, and that on the day and year last aforesaid, and within the jurisdiction of said district court, that he, the said Simeon Hart, was engaged in an armed rebellion against the government of the United States, and had not ceased to countenance
8 said rebellion, nor has he returned to his allegiance to the United States, although public proclamation and warning has been given; and that the said Simeon Hart, on the day and year last aforesaid, within the jurisdiction of the said court, had been engaged in aiding and abetting said rebellion, and had not ceased to aid and abet, and had not returned to his allegiance to the United States, although public proclamation and warning had been duly given: Now, therefore, we command you that by public notice to be published in the Santa Fe Gazette, a newspaper published in the town of Santa Fe, New Mexico, for not less than three successive weeks, you do cause to be notified all persons and parties who may be concerned, or who may claim any interest in the above-mentioned property, or know or have anything to say why should not be decreed to be forfeited to the United States, and condemned and sold to answer the prayer of said libel, and *and* that you do especially summon and notify the said Simeon Hart that, together with all other persons interested, to be and appear before the said United States district court, at the court house in the town of Mesilla, in said 3d judicial district, on the sixth day of November, A. D. 1865, at 10 o'clock a. m., when and where said cause will be heard, then and there to interpose their claims, and answer said libel and make allegation in that behalf.

Witness the Hon. Joab Houghton, associate justice of the
9 supreme court of the Territory of New Mexico, and presiding judge of the said third judicial district court, and the seal of said court at Mesilla, N. M., this the 23d day of Sept., A. D. 1865.

[SEAL.] (Signed) SAM'L. J. JONES, *Clerk.*

And afterwards, to wit, at the November term, A. D. 1865, of the United States drstrict court for the third judicial district of the Territory of New Mexico, begun and held at the court house in the county of Dona Ana, in said district, on the first Monday of November, 1865, the following proceedings were had and held, to wit, on 9th of Nov., A. D. 1865, Abraham Cutler, United States marshal for

the Territory of New Mexico, returned into court the said monition with the following return thereon, which is in words and figures following, to wit:

I hereby certify that I have served the within process by taking possession of the property therein described, and by giving due notice in the Santa Fe Gazette to all persons claiming to appear and make good their claims, and interpose their allegations in that behalf on the 1st Monday, the 6th of November, at the U. S. district court 3d judicial district.

Mesilla, N. M., November 6th, 1865.

ABRAHAM CUTLER, *U. S. Marshal.*

10 And afterwards, to wit, on the 2d day of November, A. D. 1865, the following proceedings were had in said court, to wit:

UNITED STATES
vs.
CERTAIN HOUSES, MILLS, PROPERTY, LANDS, etc., situate in El Paso county, the property of Simeon Hart.

This cause came on to be heard on the motion of Messrs. Clever and Elkins, proctors for claimant herein, to quash the monition, return of the marshal thereon, and the publication in the case, for reasons in said monition stated and set forth, which said motion was agreed by counsel on the part of the United States, as well as for the said claimants, and the court being fully advised in the premises, overruled said motion. The said claimants by their proctors excepted to the opinion of the court in overruling said motion, and a bill of exceptions, having been signed by the presiding judge of this court, is ordered to be filed with the papers in this case.

And afterwards, to wit, on the 23d day of September, A. D. 1865, claimants, by his attorneys, filed in open court a bill of exceptions, which said bill of exceptions was in words and figures following, to wit:

11 In district court of the United States for the 3d judicial district of the Territory of New Mexico, November term, A. D. 1865.

UNITED STATES
vs.

PROPERTY seized upon by the marshal of the U. S., and libelled as property of Simeon Hart, situated in El Paso county, State of Texas.

Be it remembered, that on the hearing of the above-entitled cause, the proctors for Simeon Hart, claimant to the property herein, made the following motion, which said motion is in the words and figures following, to wit:

In the district court of the United States for the 3d judicial district of the Territory of New Mexico, November term, A. D. 1865.

THE UNITED STATES

vs.

PROPERTY seized upon by the United States marshal, and libelled as the property of Simeon Hart, situated in El Paso county, State of Texas.

And now appeared in open court Clever and Elkins, proctors of this court, and atty's for claimants herein, for the purpose of this motion and no other, and move the court to quash the monition, return, and publication herein for the following reasons:

1st. Said monition does not authorize the said United States marshal to attach property therein described.

2d. The said monition is contrary to the facts set forth in the libel herein, and totally insufficient.

12 3d. The notice of seizure and libel has not been posted up in a public manner, for the space of fourteen days, near the place of seizure, as required by law.

4th. That the said United States marshal has not especially summoned and notified the said Simeon Hart to appear before said court as commanded to do in said monition.

5th. There has been no order of said court made on said libel authorizing notice to be given of the seizure and libel of the property herein mentioned.

6th. No publication of the cause of libel has been made as required by law.

7th. The cause of libel contained in publication herein is a different cause from the one set forth and relied upon said libel herein.

8th. Said service and publication has been made by the officer designated by law to make the same.

9th. There is no proof of publication here as required by law.

And for other good and sufficient reasons.

(Signed) CLEVER & ELKINS,
For motion.

Which said motion, after being argued by the district attorney of the United States, and the proctors for said claimants, on the

13 part of said claimants, was then and there overruled by the court.

To the opinion of the court, in overruling said motion, the claimants, by their proctors, excepted, and asks that this their bill of exceptions be signed, sealed, and made a part of the record herein, which is done accordingly.

(Signed) J. HOUGHTON, *Judge.*

And afterwards, to wit, on the 20th day of November, A. D. 1865, the following information was filed with the clerk of said court, which said information is in words and figures, to wit:

FRANKLIN, TEXAS, *July* 15, 1864.

Theodore D. Wheaton, esq., U. S. district attorney:

SIR: I have the honor to inform you that I have this day seized the following described property and real estate of Simeon Hart, a person who by his disloyal and treasonable acts has rendered his property, estate, credit, moneys, and effects, liable to confiscation under the law approved July 17, 1862, viz:

A certain tract of land situated about one mile and one half in a westerly direction from the town of Franklin, El Paso county, Texas, on the Rio Grande, with a flouring mill, dwelling houses, corrals, ranch houses, stables and other buildings thereon, together
14 with all machinery attached to and used in the running of said mill, and all the privileges thereto belonging to said property is known as Hart's mills.

Also a certain tract of land adjoining said town of Franklin, Texas, on the west, and containing 320 acres and known as survey No. 9.

Also a certain tract of land situated in El Paso county, State of Texas, adjoining tract upon which is situated "Hart's mills" "on the west," containing 1,156 acres, and known and recorded as survey No. 10.

Also a deed of trust in and to a certain tract of land, situated near the town of Franklin, county of El Paso, Texas, upon which is situated buildings known as Skillman's blacksmith shop and residence, with all the improvements thereon, as per deed of conveyance from William B. Smith to said Skillman, dated March 23d, 1857; and I respectfully request that proceedings may be instituted that the above described property may be condemned, and that this notice may be filed with the papers in this case.

I am, sir, yours, &c.,

A. CUTLER, *Captor.*

And afterwards, to wit, on the 20th day of November, A. D. 1865, the following publication, which was published in the Santa Fé Weekly Gazette for three successive weeks, was filed in said court, which said publication is in words and figures, to wit:

15 *U. S. marshal's proclamation.*

UNITED STATES OF AMERICA,
3d Judicial District of the Territory of New Mexico, ss:

I, Abraham Cutler, marshal of the United States for the Territory of New Mexico, do hereby give public notice that in the case of the United States, libellant, against the property of Simeon Hart, viz: a certain tract of land situated about one mile and one half in a westerly direction from the town of Franklin, El Paso county, Texas, on

the Rio Grande, with a flouring mill, dwelling houses, stables, and other buildings thereon, together with all machinery attached to and used in the running of said mill, and all the privileges thereunto belonging known as Hart's mills.

Also a certain tract of land adjoining said town of Franklin, Texas, on the west, containing 320 acres, and known as survey No. 9.

Also a certain tract of land adjoining upon the west, the tract upon which is situated Hart's mills, containing 1,150 acres, and known and recorded as survey No. 10.

Also a deed of trust in and to a certain tract of land situated near said town of Franklin, upon which are buildings known as Skillman's blacksmith shop and residence, with all the improvements thereon, as per deed of conveyance from Wm. T. Smith to said Skillman, dated March 23d, 1857.

All situated in the county of El Paso, and State of Texas.

16 The same being libelled in the United States district court, for the 3d judicial district of the Territory of New Mexico, in a case of seizure and forfeiture for alleged violation of the acts of Congress, approved July 13th, 1861, and at other times since that time. And I hereby give further notice that the time assigned for the return of said warrant, and the hearing of this cause is the first Monday, the sixth day of November, A. D. 1865; and I hereby admonish and summon all persons claiming any interest in said property, or knowing or having anything to say why the same should not be decreed to be forfeited to the United States and be condemned and sold, to answer the prayer of said libel, that they be and appear before said district court at the court-house in La Mesilla, in said district, on the 6th day of November, A. D. 1865, at 10 o'clock a. m., when and where said cause will be heard, there and then to interpose their claims and answer said libel and make their allegations in that behalf.

La Mesilla, New Mexico, September 2, 1866.

(Signed) ABRAHAM CUTLER,
U. S. Marshal.

And afterwards to wit, on the 29th day of November, A. D. 1865, the following proceedings were had, which were in words and figures following, to wit:

UNITED STATES
vs.
A CERTAIN MILL, DWELLING HOUSE, LANDS, &c., situate in El Paso county, Texas, the property of Simeon Hart.

17 And now on this day comes the libellee in this cause by his proctors, Clever and Elkins, esqr's, and in open court asks leave of the court to file his claim to the property libelled of the court, to file his claim to the property libelled herein, to the filing of which said claim the United States by her district attorney objected, which said objection was sustained by the court. Whereupon the

said claimant by his said proctors, excepted to the opinion of the court and asked the court to sign a bill of exceptions, which was refused by the court.

The said proctors, Clever and Elkins, esqr's, then offered to file the said claimant's plea to the jurisdiction of this court in this cause, to the filing of which said plea the United States by her district attorney objected, which said objection was sustained by the court. Whereupon said claimant's proctors excepted to the opinion of the court in refusing said plea to be filed, and asked the court to sign a bill of exceptions herein, which was refused by the court; and no further or other claimant appearing, and the court being satisfied that proclamation has been duly made in the Santa Fe Gazette, a newspaper published in the Territory of New Mexico, for three successive weeks, ending on the 28th day of October, A. D. one thousand eight hundred and sixty-five, notifying all claimants to appear at this term of this court, and establish their claims. Whereupon S. B. Elkins, esq., appeared and stated to the court, that he appeared for the libellee in this cause, and was ready to show cause why the
18 same should not be condemned as forfeited; the court refused any appearance in this cause to be made; thereupon John S. Watts, esq., attorney of Thomas J. Thompson stated to the court that he claimed for the said Thomas J. Thompson a sufficient amount of the proceeds of the property libelled herein as would pay the claim of the said Thomas J. Thompson filed herein.

And no further or other claimant appearing, and after proclamation to the like effect made by the marshal in open court, it is ordered, adjudged, and decreed, that a decree by default be entered against the property libelled herein, and that testimony on the part of the United States, as well as upon the part of the said Thomas J. Thompson, be taken before the commissioner to be reported at the present term of this court.

And afterwards, to wit, on the 29th day of November, A. D. 1865, the following proceedings were had, which are in words and figures as follows, to wit:

UNITED STATES
vs.
CERTAIN LAND, MILLS, etc., situate in El Paso county, Texas, the property of Simeon Hart.

And now comes the United States by her district attorney and asks leave of the court to amend the libel herein, which leave is granted by the court.

And afterwards, to wit, on the 2d day of December, A. D. 1865, the commissioner appointed to take testimony by the court,
19 filed with the clerk of said court the following evidence in said cause, which said evidence is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Third Judicial District of the Territory of New Mexico:

United States district court, Nov'r term, 1865, in admiralty.

THE UNITED STATES, libellant,

vs.

A CERTAIN tract of land situated about one mile and one-half in a westerly direction from the town of Franklin, El Paso county, Texas, on the Rio Grande, with a flouring mill, dwelling house, stables, and other buildings thereon, with all machinery and water privileges connected with said mill; also a tract of land adjoining said town of Franklin on the west side, containing 320 acres, and known as survey No. 9; also a tract of land upon which is situated Hart's mill, containing 1,150 acres, and known and recorded as survey No. 10; all situated in El Paso county, State of Texas, the same being libelled as the property of Simeon Hart.

Testimony of witnesses taken in the above-entitled case.

B. W. Gillock, being by me first duly sworn as hereinafter certified, and interrogated by the United States district attorney, deposes as follows:

I have known Simeon Hart, the libellee in this case, since the year 1858, up to July, 1865. He resided in El Paso county, State
20 of Texas, when I first knew him; was a man of wealth and influence over the people of El Paso county. He was an active secessionist in the years of 1861 and 1862, and exerted a great influence over the people of said El Paso county in inducing them to join the rebel cause. When I first knew Simeon Hart he was a government contractor under the government of the United States. In the year of 1861, I heard him say he was going on to Richmond to loan the rebel government, so-called, two hundred thousand dollars. He went to Richmond, but I do not know whether he loaned the money or not. When the confederate forces invaded New Mexico he entertained the rebel officers at his house frequently and generally. He went south with the rebel General Henry H. Sibley's brigade in 1862. I saw him in 1863 and 1864 in San Antonio, Texas. He was then a major in the rebel army and rebel commissioner for the sale of cotton. He declared himself a secessionist up to the last time I saw him. He was a citizen of the United States. He owned property described in the libel in this case; the said property is situated in El Paso county, and State of Texas.

(Signed) B. W. GILLOCK.

David Sperry, being duly sworn, deposes as follows:

I have known Simeon Hart, the libellee in this case from 1854, up to 1862. When I first knew him he was a large contractor under the government of the United States. He was a man of wealth,
21 and one of the most influential men in El Paso county, State

of Texas. He made the greater part of his wealth as a contractor under the government of the United States. He was a strong southern man, and entertained the rebel General Sibley's officers frequently and generally. I heard him say to the people in El Paso county, Texas, to induce them to secede or to vote for the secession movements, that it was no use to see what President Lincoln would do after he took his seat; but now was the time for them *for them* all to act in concert in favor of secession. It was a matter of much public conversation on the streets in El Paso, Texas, where Mr. Hart lived; that in 1861 he, Hart, hired persons to go to El Paso, in the republic of Mexico, to kidnap William W. Mills, now collector of customs at El Paso, Texas, and deliver him to the rebel authorities at Fort Bliss. Said Hart never denied the above statement to my knowledge. He furnished flour to the rebel troops at Fort Bliss in 1861. He went south with the rebel General Henry H. Sibley's brigade, and has not since returned, to my knowledge. He was a citizen of the United States, and owned the property described in the libel; said property is situated in El Paso county, State of Texas.

(Signed) D. SPERRY.

William W. Mills, United States collector of customs at El Paso county, Texas, being by me first duly sworn as hereinafter
22 certified, deposes as follows:

I first knew Simeon Hart, the libellee in this case, in the year of 1858. He was a government contractor under the government of the United States. He then lived in El Paso county, Texas. He was a man of wealth, and was more instrumental than any other man in initiating the secession movements in that county. I heard him speak often in favor of rebellion, and heard him say on the streets in El Paso, Texas, "Champagne for the secessionist and a halter for Union men." Hart offered and paid a reward to those who arrested me in El Paso, in the republic of Mexico, and delivered me to the confederates at Fort Bliss. He furnished flour to the confederates at Forts Bliss and Fillmore. He went to Texas with General Sibley's forces in 1862. I have since seen orders in the Texas newspapers signed by him as major in C. S. A., and commissioner for the sale of cotton. He owned the property described in the libel in this case which is situated in the county of El Paso, State of Texas. He was a citizen of the United States. I never heard of any reasons for my arrest, except that I was a Union man. I was not tried for or charged with any crime. He received a large amount of bacon and turned it over to the confederate forces. The confederate forces were commanded by the rebel General Henry H. Sibley. Said Hart acquired his wealth by his contracts under the federal government.
23 After having been brought from the republic of Mexico by the emissaries of Mr. Hart, I was confined at Fort Bliss, and treated with great cruelty and indignity. Colonel Baylor excused himself for so treating me by saying that Judge Hart had influenced him to do so.

(Signed) W. W. MILLS.

Samuel J. Jones, being duly sworn, deposes as follows:

I have known Simeon Hart, the libellee in this case, since 1859. He owned the property described in this case, or claimed it. He was a strong southern man, and advocated the cause of the rebellion at the commencement of the rebellion. I have not seen him since spring of 1861, nor heard him say anything about it. He was a heavy contractor under the government of the United States just before the rebellion, and he was in the years of 1861 and 1862 a contractor under the confederate government.

(Signed) SAM'L J. JONES.

I hereby certify the foregoing testimony was taken before me, at my office, in the town of Mesilla, in the third judicial district of the Territory of New Mexico, on the 28th day of November, 1865; that the same was reduced to writing by me. I first swore the above witnesses to testify the truth, the whole truth, and nothing but the truth in the above-entitled case, then on hearing before me.

(Signed) W. P. BACON,
U. S. Commissioner.

Mesilla, N. M., November 29, 1865.

24 And afterwards, to wit, on the 2d day of December, A. D. 1865, the presiding judge of said court rendered a decree in said cause, which said decree appears of record in said court, and is in words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, Third Judicial District:

THE UNITED STATES
vs.

REAL ESTATE, consisting of lands, flouring mill, dwelling houses, corrals, stables, &c., situated in the county of El Paso, State of Texas, the property of Simeon Hart.

This cause came on to be heard upon the libel, exhibits, and testimony, and it appearing to the court that although has been duly issued and proclamation made and notice duly given at the door of the court house calling upon all persons having aught to say why the property and estate described in the libel should not be condemned as forfeited to the United States to appear that they might be heard, and no claimants having appeared, and the court having heard the testimony in the case, and being now fully advised in the premises, it is ordered, adjudged, and decreed that the property described in the libel in said case, to wit, a certain tract of land situated about one mile and a half in a westerly direction from the
25 town of Franklin, El Paso county, State of Texas, on the Rio Grande, with a flouring mill, dwelling houses, corrals, ranch houses, stables, and other buildings thereon, together with all machinery attached to and used in running of said mill, and all the privileges thereunto pertaining, being known as "Hart's mills;"

Also a certain tract of land adjoining said town of Franklin, Texas, on the west, and containing three hundred and twenty acres, and known as survey No. 9;

Also a certain tract of land situated in El Paso county, State of Texas, adjoining the tract upon is situated "Hart's mills" on the west, containing eleven hundred and fifty-six acres, and known and recorded as survey No. 10,

Be condemned as forfeited to the United States, and the same be sold at public sale at the public Plaza of the town of Franklin, in the county of El Paso, Texas, by the marshal of the United States for the district of New Mexico, to the highest bidder for cash, after notice having been first given by printed or written handbills at least two weeks before the day of sale, posted in the towns of Franklin and San Elizario, Texas, and La Mesilla and Las Cruces, New Mexico, describing the property to be sold and the time and place of sale; that a deed be made by the said marshal of the real estate thus sold to the purchaser, and that after the deduction and payment of all fees and costs accruing in said case, one half of the proceeds of said case remaining shall be paid by the said marshal to the informant
26 herein, Abraham Cutler, and the other half thereof shall be paid by the said marshal as soon as may be after said sale into the United States depository at Santa Fe, New Mexico, subject to, and to abide the orders of this court in the business next regular term.

(Signed) J. HOUGHTON,
Associate Justice Supreme Court of New Mexico,
and Presiding Judge of the 3d Judicial District.

And afterwards, to wit, on the 2d day of December, A. D. 1865, the following proceedings were had in said court, at the term aforesaid, which said proceedings are in the words and figures as follows, to wit:

And now appeared Clever and Elkins, attorneys for libellee and claimant, and asks the court for an appeal to the supreme court in this case. To their appearance for this purpose the district attorney objected, which objection was sustained by the court.

And afterwards, to wit, on the 21 day of November, A. D. 1865, John S. Watts, attorney for Thomas J. Thompson, claimant herein, filed the claim and exhibits of the said Thomas J. Thompson to the proceeds of the property libelled herein, which are in words and figures following, to wit:

27 United States district court, 3d judicial district, November term, 1865.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Dona Ana:

To the Hon. Joab Houghton, associate justice of the supreme court of the Territory of New Mexico, and judge presiding in the third judicial district in and for the county of Dona Ana.

Your petitioner, Thomas J. Thompson, a loyal citizen of the United States, and resident of the city of St. Louis, in the State of Missouri,

would respectfully state to the court that one Simeon Hart, late a resident of El Paso county, Texas, is indebted to the said petitioner in the sum of sixteen thousand six hundred and nineteen dollars and thirty-eight cents, by virtue of a judgment rendered in the provisional courts of Texas, at Brownsville, Cameron county, at the May term of said court, 1864, on the 3d day of May, 1864, with costs of suit taxed at thirty-three dollars and sixty cents, and that said judgment and costs is wholly unpaid and still due and owing; your petitioner would further state that the United States has instituted suit against the said Simeon Hart for the confiscation of the said Simeon Hart to the United States. Now the said petitioner sets up and claims that he the said petitioner, under and by virtue of said judgment, has a legal and equitable lien on the said property in said libel mentioned for the payment of said judgment, interest, and costs, and in case of confiscation and sale of said property of said Hart, shall insist upon and claim the proceeds of said sale of said property, to be applied to the discharge of said debt, interest, and costs.

28 Your petitioner further states that of all said facts will more fully appear by reference to a certified copy of said judgment hereby made a part of this petition, marked as Exhibit A herein; all of which is respectfully submitted to the court.

(Signed) THOMAS J. THOMPSON,
By his Att'y, John S. Watts.

Exhibit marked A, accompanying petition of claim of Thomas J. Thompson, is in words and figures following, to wit:

Transcript of the proceedings and judgment in the following entitled and numbered cause, tried in the provisional court of the military government of the State of Texas, before the Honorable J. B. McFarland, judge.

TURNER & HUBBARD, *for Pl'ff.*

In provisional court for the State of Texas.

THOMAS J. THOMPSON *vs.* SIMEON HART. } No. 16.

THE STATE OF TEXAS:

To the honorable J. B. McFarland, judge of the provisional court of the military government of the State of Texas, sitting at Brownsville, Cameron county, in the said State.

Your petitioner, a resident citizen of the county of St. Louis, and State of Missouri, plaintiff herein, complains of Simeon Hart, formerly a resident citizen of El Paso, El Paso county, Texas, but who is now a transient person, and his residence is unknown to your peti-

29 tioner; and for cause of action petitioner alleges, that on or about the 28th day of October, A. D. 1864, W. S. McKnight, James W. Richardson, and Charles Boggy, then doing business as

partners, and were partners in fact under the name and firm style of McKnight, Richardson & Co., resident citizens of Dubuque, in the county of Dubuque, and State of Iowa, at El Paso, Texas, aforesaid, then and there having a large amount of money, to wit, the sum of ($13,835\frac{4}{100}$) thirteen thousand eight hundred and thirty-four$\frac{4}{100}$ dollars, and being desirous to transport to San Antonio, Texas, at the special instance and request of the said Simeon Hart, he, the said Hart, then and there stating and pretending that he had funds in the hands of certain parties in San Antonio aforesaid sufficient to cover the amount, and proposed to take of the said McKnight, Richardson & Co. the said sum of money, and give to them his bill of exchange drawn on H. Meyer & Co. of San Antonio therefor. Whereupon the said McKnight, Richardson & Co. paid, deposited, and delivered to the said Simeon Hart, at El Paso, Texas, the date above mentioned, the said sum of $\$13,835\frac{4}{100}$ dollars, and received therefor, from the said Hart, his bill of exchange dated the same date, drawn upon the said H. Meyer & Co. of San Antonio, for the said sum payable in specie. A more perfect description of said bill of exchange petitioner cannot now give, because the said Hart has wrongfully, and without payment of the same, obtained the possession thereof in manner stated hereafter.

30 Petitioner shows that afterwards, to wit, on or about the twentieth day of November, 1861, the said McKnight, Richardson & Co. presented the said bill of exchange to the therein mentioned, at San Antonio Texas, for payment, and payment was refused, on the ground that the said Hart had no funds in their hands, nor had had up to the time of the presentation of said bill of exchange, to draw against or upon, and payment was thereupon refused, of all which said Hart had due notice.

Petitioner alleges that after the presentation of the said bill of exchange for payment as aforesaid, the said McKnight, Richardson & Co. employed one David C. Knox to take the said bill of exchange and go to El Paso, Texas, and return the said bill of exchange to the said Hart, defendant, and receive from him the said sum of $\$13,835\frac{4}{100}$.

That this was the extent of the authority of the said David C. Knox, agent as aforesaid. That the said David C. Knox did go to El Paso, and request of the defendant Hart the said sum of money mentioned in the said bill of exchange, the said Hart then refusing to pay the same or any part thereof, but proposed to the said David C. Knox that he would execute his obligation therefor, payable in confederate money, and agreeing that the same should be at par at time of payment, or he would make it so; petitioner alleges that the said agent, for the specific purpose of recovering back the said sum of $\$13,835\frac{4}{100}$, without authority, and without the knowledge or consent of the said McKnight, Richardson & Co.,

31 then and there, to wit, at El Paso, on or about the 10th day of December, 1861, delivered up to the said Hart his said bill of exchange, and took from the said Simeon Hart an instrument in writing, in words and figures substantially as follows, to wit:

EL PASO, TEXAS, *Oct.* 28, 1861.

One day after date I promise to pay to the order of McKnight, Richardson & Co. thirteen thousand eight hundred and thirty-five dollars, value received, in confederate bonds or notes, if equal to cash, if not to be made equal to cash.

$13,835\frac{04}{100}$. (Signed) S. HART.

Petitioner alleges that the said instrument was taken by said agent without authority; that the same never was received in ratification of said contract; that there is not nor never was any such thing as confederate bonds or notes; that the so-called confederate bonds or notes are worthless and of no value; that the said instrument of writing is of no value save as evidence the amount of money due your petitioner in specie.

Petitioner therefore alleges that the said Simeon Hart fraudulently and unlawfully, and by means of the false and fraudulent representation, obtained the possession of said sum of money, and has refused and still does refuse to pay the same, or any part thereof, to the great damage of petitioner.

Petitioner shows that, on the 24th day *day* of February, 1864, the said McKnight, Richardson & Co., for value received, sold to,
32 transferred, and delivered the said claim and the amount due thereon, together with all rights of title and remedy which they themselves had against said Hart.

Petitioner further shows that the said Charles Bogy, on the 25th day of February, A. D. 1860, sold and transferred and delivered unto petitioner the said claim of $13,835\frac{04}{100}$, together with all rights of recovery and remedy which he had thereto or therein. Whereupon your petitioner became the legal owner and holder of the said claim of $13,835\frac{04}{100}$ in specie, together with interest thereon. Petitioner would further show to the court that the said sum of money and the interest thereon is payable to petitioner in specie, and in case of judgment be rendered for the aggregate sum due at the rendition thereof, the said defendant would be unable to pay off and discharge the same for so many dollars in legal tender notes of the United States, when in truth and in fact the said legal tender notes are worth no more than sixty cents on the dollar. The said defendant, Hart, is hereby notified to produce in evidence the said draft drawn by him upon the said H. Meyer & Co., of San Antonio, Texas, for the said sum of $13,835\frac{04}{100}$, or secondary evidence will be given of its contents.

In consideration of the premises the said plaintiff alleges that the said defendant is indebted to your petitioner in the sum of $13,835 $\frac{04}{100}$, and the interest thereon at the rate of 8 per cent. per annum to date of judgment, for so much money had and received for the use and benefit of petitioner. Further, that the said defendant is in like
33 sum indebted to your petitioner upon his said instrument in writing, signed and delivered by himself, for value received, commonly called and herein described as a bill of exchange, both of which indebtednesses being due, and the same and both to be discharged in the same payment.

Premises considered, petitioner prays for process by publication pursuant to law, and that upon final trial your petitioner may have judgment for the said sum of money, and interest thereon, together with the additional sum of forty cents on the dollar, that being the difference in value between legal tender notes and specie, the said forty per cent. to be deducted in case payment shall be finally made in specie; and for all cost of this suit and for such other and further relief as shall be agreeable to equity and good conscience, and your petitioner will ever pray, &c.

(Signed) TURNER & HUBBARD,
Att'ys for Pl't'ff.

Plaintiff's petition.—Filed March 3, 1864, *sig'd A. G. Beedington, clerk.*

THE STATE OF TEXAS, *Cameron County:*

THOMAS J. THOMPSON
vs.
SIMEON HART. } No. 16.

E. B. Turner, one of the attorneys in the above-entitled cause, and which he now files, says that Simeon Hart is a transient person, and that his place of residence is unknown to affiant, and that
34 the plaintiff is not in the State to make this affidavit, and he, therefore, makes the same for him as his said attorney.

(Signed) E. B. TURNER,
Att'y for Plaintiff.

Sworn and subscribed to before me this 3d day of March, 1864.

(Signed) A. G. BEEDINGTON,
Clerk of Prov. Court.

THE STATE OF TEXAS, *Cameron County:*

THOMAS J. THOMPSON
vs.
SIMEON HART.

To marshal of the State of Texas, provisional government.

In the name and by the authority of the State of Texas, you are hereby to summon Simeon Hart, a transient person, formerly of El Paso county, Texas, to be and appear before the honorable judge, J. B. McFarland, judge the provisional court of the military government of Texas, at the court house in Brownsville, Cameron county, Texas, on the 4th day of April, 1864, then and there to answer to the petition of Thomas J. Thompson, now on file in my office, who is the assignee of a claim for $13,835 $\frac{04}{00}$, assigned to him and originally due Messrs. McKnight, Richardson & Co., of Dubuque, Iowa, for cash paid to said Hart. The petitioner alleges such indebtedness accrued to the said partners, McKnight, Richardson & Co., for cash paid to said Hart, for which said Hart, on the 28th day

of October, 1861, gave his bill of exchange, payable in specie,
35 on H. Meyer & Co., of San Antonio, Texas. That said money was fraudulently obtained; that the said draft was subsequently wrongfully obtained possession of by said Hart from an agent of said McKnight, Richardson & Co. The plaintiff claims the whole amount is due him, together with interest thereon at 8 per cent. per annum, and claimed judgment also for 60 per cent. upon the said sum in addition to $13,835\frac{04}{100}$, that being the difference in value between specie and legal tender notes.

You will summon said Simeon Hart by publication in the Loyal National Union Journal, a newspaper printed in Cameron county, Texas, and of your proceedings hereon you will then and there make due return.

Given under my hand and seal of office at Brownsville, Texas, this 3d day of March, 1864.

(Signed) A. G. BEEDINGTON,
Clerk of Provisional Court.

Received March 3d, 1864.

I do hereby order the foregoing summons to be published in the said newspaper for four successive weeks previous to the return day thereof.

(Signed) S. B. REID, *Marshal.*

STATE OF TEXAS, *Cameron County, ss:*

I, George G. Carmons, being first duly sworn, on oath says, that I am the editor and publisher of the Loyal National Union Jour-
36 nal, a weekly newspaper published at Brownsville, Cameron county, Texas, and that the annexed printed legal notice in the case of Thomas J. Thompson *vs.* Simeon Hart, has been published in said newspaper for four successive weeks, commencing on the 5th day of March, 1864, and ending on the 26th day of March, 1864, and that said notice as here annexed is a true copy of the original furnished me by the clerk of said provisional court.

(Signed) GEORGE G. CARMAN.

Subscribed to and sworn to before me, by George G. Carman, this 4th day of April, 1864, at Brownsville, Texas.

(Signed) A. G. BEEDINGTON,
Clerk of Prov. Court.

March 3d, 1864.

Received this citation at 12 o'clock meridian; came to hand the third day of March, 1864, at 12 o'clock m.

Whereupon I ordered a true copy of the said writ, containing a brief statement of the cause of complaint, to be published in the Loyal National Union Journal, a newspaper printed in the said county of Cameron, Texas, for four successive weeks previous to the 4th day of April, 1864, and have caused the same to be served on the defendant by causing the same to be published accordingly. A true copy of said publication is hereto attached, together with the

affidavit of publication, to which reference is hereby made, and the same is made part of the return. I therefore return this writ duly served by publication.

37 (Signed) S. B. REID, *Marshal.*

Printed notice.

STATE OF TEXAS, *Cameron county:*

THOMAS J. THOMPSON
vs.
SIMEON HART.

To the marshal of the State of Texas, provisional government.

In the name and by the authority of the State of Texas, you are hereby commanded to summon Simeon Hart, a transient person formerly of El Paso, Texas, to be and appear before the honorable Judge B. McFarland, judge of the provisional court of the military government of Texas, at the court house in Brownsville, Cameron county, Texas, on the 4th day of April, 1864, then and there to answer to the petition of Thomas J. Thompson, now on file in my office, who is the assignee of a claim for $13,835\frac{4}{100}$ assigned to him, and originally due to Messrs. McKnight, Richardson & Co., of Dubuque, Iowa; the petition alleges such indebtedness accrued to the said parties McKnight, Richardson & Co., for cash paid to said Hart, for which said Hart, on the 28th day of October, 1861, gave his bill of exchange, payable in specie on H. Meyer & Co., of San Antonio, Texas; said money was fraudulently obtained; that the said draft was subsequently wrongfully obtained possession of by said Hart from an agent of said McKnight, Richardson & Co. The plaintiff claims the total amount is due him, together with interest
38 thereon, at the rate of 8 per cent. per annum, and claims judgment also for 60 per cent. upon the said sum in addition to the $13,835\frac{4}{100}$, that being the difference in value between specie and legal tender notes.

You will summon said Simeon Hart, by publication in the Loyal National Union Journal, a newspaper published in Cameron county, Texas, and of your proceedings hereon you will then and there make due return.

Given under my hand and seal of office, at Brownsville, this 3d day of March, 1864.

(Signed) A. G. BEEDINGTON, [SEAL.]
Clerk of the Prov. Court.

Received March 3, 1864.

I do order the foregoing summons to be published in the said newspaper for four successive weeks previous to the return day thereof.

(Signed) S. B. REID, *Marshal.*

I certify that the above and foregoing is a true copy of the original citation now on file in my office.

(Signed) A. G. BEEDINGTON,
Clerk of the Provisional Court, Texas.

In court, April term, 1864, continued until the first Monday in May next, May 3, 1864.

THOMAS J. THOMPSON
vs.
SIMEON HART. } No. 16.

Judgment final, by default, for plaintiff, with writ of inquiry
39 returnable forthwith; jury, and verdict for plaintiff for sixteen thousand six hundred and seventeen $\frac{38}{100}$ dollars and judgment accordingly.

TURNER & HUBBARD,
Atty's for Plaintiff.

In open court, April term, 1864, April 4, 1864.

THOMAS J. THOMPSON
vs
SIMEON HART. } No. 16.

In this cause, it appearing that the citation has been regularly served by publication in the Loyal National Union Journal, for four successive weeks previous to this date, and the said defendant having failed to appear in person or by attorney, and answer to the said cause, it is, therefore, on motion of E. B. Turner, attorney for the said plaintiff, ordered that this cause stand continued until the ensuing term of this court, to be holden on the first Monday of May next, at which time judgment final, by default, will be rendered, unless defendant make his appearance then.

TURNER & HUBBARD,
Atty's for Plaintiff.

In open court, May term, 1864.

THOMAS J. THOMPSON
vs.
SIMEON HART. } No. 16.

In this cause comes E. B. Turner, one of the attorneys for the plaintiff, and moves the court for a judgment final, by default, in this cause, and that a writ of inquiry be awarded and executed to assess the damages in the cause. Whereupon it appearing to the court that the defendant has been duly cited to be and appear at the last term of this court, began and holden on the 1st Monday
40 of April last, by publication, and that the cause was continued over from that term to the present, it is, therefore, ordered that judgment final, by default, be, and the same is hereby, entered

in this cause in favor of said plaintiff against the said defendant, and that a writ of inquiry be awarded forthwith.

TURNER & HUBBARD,
Atty's for Plaintiff.

In provisional court, May term, 1864, Brownsville, Texas.

THOMAS J. THOMPSON
vs.
SIMEON HART. } No. 16.

Testimony produced in this cause rendered to writing in open court by order of the judge presiding. Charles Bogy produced as witness for the plaintiff, being duly sworn, says:

That at the time the war commenced, Messrs. McKnight, Richardson & Co. were doing business at El Paso, Texas. Mr. Richardson was then there, and desirous to get out of the country, as Gen. Sibley had seized the goods and money of the firm; he had $13,835 in eagle dollars, and, as it was inconvenient to carry, he turned it over to the defendant, the specie aforesaid, and took his draft on H. Meyer & Co., bankers at San Antonio, Texas, for the amount of $13,835.

The draft was presented to H. Meyer & Co. for payment, which they refused, saying that they had no money in their hands, nor did they have when the draft was made, or at any subsequent time; this was about the 20th of November, 1862; the draft was immediately protested and sent back to Mr. Hart, defendant, by Mr. David C. Knox, with instruction to return the draft and get the money.

41 The agent was only instructed as above. When Mr. Knox arrived at El Paso, Mr. Hart, def't, refused to take up the draft, saying that he had no money, that he had paid out all of the money, but offered to give a note payable in confederate notes or bonds and make them equal to cash. Mr. Knox refused this for some time, but after two or three days, finding he could do no better, took same. All of the above statement I know from Mr. Hart's own statement to me, as well as Mr. Richardson's.

I called on Mr. Hart, defendant, a year ago last January, at this place, and wanted him to pay me this $13,835 dollars, and he refused to do so unless I would take confederate money, which I declined to do, and told him I would not take confederate money at all. I also told him at the same time that I did not recognize Mr. Knox action in taking the note for confederate money, as he had no authority to take it. I also saw defendant last June, at San Antonio, and he refused to pay the claim; he never has paid said sum of $13,835 dollars or any part of the same; the firm of McKnight, Richardson & Co. is composed of W. S. McKnight, Jas. W. Richardson, and myself; this claim was sold and transferred bona fide to me by the other members of the firm, and sold and transferred bona fide by me to plaintiff, who resides in St. Louis, Mo.; this money was paid to Hart on the 28th day of October, 1861. I do not know where def't now is. The last I heard from him, he was in San Antonio. He is now a rebel or confederate cotton agent. I was not present when the dratt of def't

42 was presented to Meyer & Co., at San Antonio, but def't admitted to me he had no money there when he drew the draft and received the money from Richardson.

The interest on this sum of money, at the rate of 8 per cent. per annum, is now due from October 28th, 1861, to this date, being the sum of twenty-seven hundred and eighty-two dollars and thirty-eight cents, making in all now due plaintiff from defendant, the sum of sixteen thousand six hundred and seventeen dollars and thirty-eight cents. The defendant left El Paso, Texas, about the 8th or 10th of July, 1862, just before the United States forces arrived there and took posession, which they still hold.

(Signed) CHAS. BOGY.

I do certify that the foregoing statement of facts contains all the evidence adduced before the court and jury on the final hearing thereof, that the same was taken by my direction, and is correctly taken down.

Dated May 3d, 1864.

(Signed) J. B. McFARLAND,
Judge of the Provisional Court of Texas.

May term, 1864.

THOMAS J. THOMPSON *vs.* SIMEON HART. } No. 16.

And now, on this day, came on to be heard the above-entitled cause, wherein judgment, by default, has been entered and a writ of inquiry awarded, and the plaintiff, by his attorney, having
43 announced himself ready for trial, and for the execution of said writ:

Thereupon a jury of twelve good and lawful men, consisting of P. D. Alexander, foreman, and eleven others, who, after hearing the allegation and proofs in the cause, returned into the court the following verdict, to wit:

THOMPSON *vs.* HART.

MAY 3, 1864.

We, the jury, find for the plaintiff in the sum of sixteen thousand six hundred and seventeen 38-100 dollars, and assess the damages in that sum.

(Signed) P. D. ALEXANDER, *Foreman.*

Whereupon it is ordered, adjudged, and decreed that the said plaintiff, Thomas J. Thompson, do have and recover of and from the said defendant the just and full sum sixteen thousand six hundred seventeen 38-100 dollars, together with costs of this suit, taxed at

thirty-three dollars and sixty cents; and it is further ordered, adjudged, and decreed that the judgment draw interest at the rate of 8 per cent. per annum from this date till paid, for all which execution may issue.

TURNER & HUBBARD, *Pl'tiff Att'y.*

THOMAS J. THOMPSON *vs.* SIMEON HART. } No. 16.

Bill costs paid by plaintiff attorney:

Jury and clerk's fees	$6 00
Marshal's fees	2 60
Printer's bill	25 00
	33 60

44 THE STATE OF TEXAS, *Cameron County:*

I, A. J. Beedington, clerk of the provisional court of the State of Texas, under the military government thereof, do hereby certify that the foregoing eleven papers contain a full, true, and complete transcript and copy of the proceedings, as well as the orders and judgments filed, had, and rendered in the case of Thomas J. Thompson *vs.* Simeon Hart. I do further certify that the Hon. J. B. McFarland, judge of the said provisional court, presiding over said court during the time within which the said proceedings were had.

In testimony whereof I have hereunto set my official signature and affixed the seal of said court, at Brownsville, Texas, this 4th day of May, A. D. 1864.

(Signed) A. G. BEEDINGTON,
Clerk of the Prov. Court of the State of Texas.

And afterwards, to wit, on the 21st day of November, John S. Watts, esq., att'y for pl'tiff, presented the following copy of judgment for file, which copy of judgment is in words and figures as follows, to wit:

THOMAS J. THOMPSON *vs.* SIMEON HART. } No. 16.

And now, on this day, came on to be heard the above-entitled cause wherein judgment, by default, has been entered, and a
45 writ of inquiry awarded, and the plaintiff, by his attorney, having announced himself ready for trial and for the execution of said writ: Thereupon a jury of twelve good and lawful men, consisting of P. D. Alexander, foreman, and eleven others, who, after hearing the allegation and proof in the cause, returned into court the following verdict, to wit:

THOMPSON
vs.
HART.

MAY 3, 1864.

We, the jury, find for the plaintiff in the sum of sixteen thousand six hundred and seventeen 38-100 dollars, and assess the damages in that sum.

(Signed) P. D. ALEXANDER, *Foreman.*

Whereupon it is ordered, adjudged, and decreed that the said plaintiff, Thomas J. Thompson, do have and recover of and from said defendant the just and full sum of sixteen thousand six hundred and seventeen 38-100 dollars, together with costs of this suit, taxed at thirty-three dollars and sixty cents; and it is further ordered, adjudged, and decreed that the judgment draw interest at the rate of 8 per cent. per annum from this date till paid, for all which execution may issue.

And afterwards, to wit, on the 21st day of November, A. D. 1861, John S. Watts, esq., attorney for plaintiff, presented the following execution for file, which was filed, said execution being in the words and figures as follows, to wit:

46 The State of Texas to the marshal, sheriff, or any lawful officer in El Paso county, greeting:

Whereas on the 3d day of May, A. D. 1864, Thomas J. Thompson recovered judgment in the provisional court of said State at the May term, holden in the city of Brownsville, county of Cameron, against Simeon Hart, for the sum of sixteen thousand six hundred and seventeen dollars and thirty-eight cents, ($16,617 38-100,) together with all cost of suit in that behalf expended, as of record is manifest; and whereas it was ordered by the court that the said Thomas J. Thompson do have and recover of and from the said Simeon Hart the said sum aforesaid, together with interest thereon at the rate of 8 per cent. per annum from the rendition of said judgment till paid.

Therefore you are hereby commanded that of the goods and chattels, land and tenements of said Simeon Hart you cause to be made the said sum of ($16,617 38-100) sixteen thousand six hundred and seventeen 38-100 dollars, with 8 per cent. interest aforesaid, and the further sum of thirty-three 60-100 dollars ($33 60-100) cost of suit, and the further costs of executing this writ.

Hereof fail not, but have you then and there before said court on or before the 3d day of October next, the said money, together with this writ with your return thereon, showing how you have executed the same.

In testimony whereof I have hereunto set my hand and
47 seal of office, at office in the city of Brownsville, Texas, this 4th day of May, A. D. 1865.

[L. S.] (Signed) A. G. BEEDINGTON,
Clerk of Provisional Court, Texas.

And afterwards, on the 6th day of December, A. D. 1865, the following proceeding were had, which are in words and figures following, to wit:

THOMAS J. THOMPSON
vs.
SIMEON HART. } Confiscation.

And now comes the claimant, Thomas J. Thompson, by his attorney, John S. Watts, esquire, and the United States, by her district attorney, T. D. Wheaton, esq., and the evidence in this case being closed, and this case is now submitted to the court for hearing after argument, and the court being sufficiently advised in the premises, do disallow said claim, and direct the same to be dismissed at the cost of the claimant, taxed at dollars and cents. And on the application of the claimant in this cause an appeal is granted upon the execution of an appeal bond in the sum of five hundred dollars ($500) to the satisfaction of the court.

And afterwards, to wit, on the 6th day of December, A. D. 1865, John S. Watts, attorney for Thomas J. Thompson; claimant herein, filed the following affidavit, which is in words and figures following, to wit:

48 *Claim for property seized, &c.*

THOMAS J. THOMPSON
vs.
SIMEON HART.

TERRITORY OF NEW MEXICO, *County of Dona Ana:*

And now comes John S. Watts, the attorney of the claimant in this cause, and upon oath says that the appeal in the above-entitled cause is not taken for the purpose of vexation or delay, but because the affiant believes that the affiant is aggrieved by the judgment and decision of the court in this case.

(Signed) JOHN S. WATTS.

Subscribed and sworn to before me the 6th day of December, A. D. 1865.

(Signed) SAM. J. JONES, *Clerk.*

And afterwards, to wit, on the 6th day of December, A. D. 1865, John S. Watts, attorney for Thomas J. Thompson, claimant herein, filed for the clerk's office of said court the following appeal bond, which is in figures and words as follows, to wit:

Know all men by these presents that we, John S. Watts and William W. Mills, are held and firmly bound unto the United Statesof America in the sum of five hundred dollars, for the payment of which sum well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators firmly by these presents, signed and sealed this 6th day of December, 1865.

The condition of the above obligation is such that whereas
49 Thomas J. Thompson has this day appealed to the supreme court of the Territory of New Mexico from the decision of the United States district court for the 3d judicial district, rendered against him and in favor of the United States, upon a certain claim for the proceeds of property seized by the United States for confiscation.

Now, if the said Thomas J. Thompson shall prosecute his appeal with due diligence to a decision in the supreme court, and in case the judgment appealed from be affirmed or the appeal dismissed, will perform the judgment of the district court, and pay all costs and damages that may be adjudged against him in said appeal, then this bond is void, else good and valid in law.

(Signed) JOHN S. WATTS. [SEAL.]
(Signed) WM. W. MILLS. [SEAL.]

Approved.
(Signed) J. HOUGHTON.
Judge 3d Judicial District, N. M.

Int. rev. st., 50 cts.

In district court of the United States for the third judicial district of the Territory of New Mexico.

UNITED STATES OF AMERICA, *Territory of New Mexico:*

I, Samuel J. Jones, clerk of said court, do hereby certify that the foregoing fifty four pages is a full, true, and perfect copy of the record, proceedings, and papers had in the above-entitled cause, which remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and
50 affixed the seal of said court at Mesilla, New Mexico, this, the 20th day of December, A. D. 1865.

[SEAL.] (Signed) SAM. J. JONES, *Clerk.*

50½ Pleas begun and held in the supreme court of the Territory of New Mexico, at the January term, A. D. 1866, at the city of Santa Fe, New Mexico.

Among the proceedings of said court at the above term, on the third day of said term, it being the third day of January, A. D. 1866.

Present: Hon. Kirby Benedict, chief justice; Hon. Sidney A. Hubbell, associate justice; Hon. Joab Houghton, associate justice; Theodore D. Wheaton, esq., U. S. district attorney for said Territory; Jose D. Sena, esq., sheriff of Santa Fe county; Samuel Ellison, esq., clerk of said court.

Appeal from El Paso county, Texas.

THE PROPERTY OF SIMEON HART, appel't,
vs.
THE UNITED STATES, appellee.

On this day came the appellant by his attorney, C. P. Clever, esq., and asks leave of the court to file his assignment of errors, to the

51 filing of which the appellee, by her attorney, Theodore D. Wheaton, esq., objects; whereupon, after hearing the argument of counsel, the court overrules the objection to filing of said assignment of errors in the court below; and thereupon said assignment of errors are now here filed.

The assignment of errors is in the words and figures following, to wit:

Assignment of errors.

In the supreme court, Territory of New Mexico, January term, A. D. 1866.

UNITED STATES
vs.
REAL ESTATE, CONSISTING OF LANDS, FLOURING mills, dwelling houses, stables, &c., situate in the county of El Paso, State of Texas, the property of Simeon Hart.

The libellee, Simeon Hart, claimant to said property, by his attorneys, assigns for error the following:

1. The court erred in overruling the motion of said libellee to quash the monition, return, and publication.

2d. The court erred in entertaining jurisdiction over the property in question.

3d. The court erred in refusing to allow said libellee, the claimant to said property, to file a plea to the jurisdiction of said court.

4th. The court erred in refusing to allow said libellee to file a claim to said property.

52 5th. The court erred in refusing to assign a bill of exceptions.

6th. The court erred in refusing to allow an appeal to the supreme court.

7th. The court erred in refusing to allow the libellee to show cause why his property was not forfeited.

8th. The court erred in refusing to allow the libellee to adduce evidence in his own behalf.

9th. The court erred in refusing the libel the right of trial by jury, and in taking evidence ex-parte before a commissioner.

10th. The court erred in decreeing one-half of the proceeds of the sale of said property to Abraham Cutler, captor.

11th. The court erred in proceeding as a court of admiralty.

CLEVER & ELKINS,
Att'ys for Libellee and Claimant.

And be it further remembered, that on the first day of January, A. D. 1866, being the first day of said court, the following assignment of errors was presented for file in the clerk's office of said court:

53 In the supreme court of the Territory of New Mexico, January term, 1866.

THE UNITED STATES
vs.
THE PROPERTY OF SIMEON HART. } Confiscation.

The plaintiffs in error, Thomas J. Thompson, claimant in the court below, by John S. Watts, his attorney, now assign upon the record in this case the following errors, to wit:

1st. The court below erred in dismissing the claim of the claimant and rendering judgment against said claimant, when in fact the judgment of the court below, should have been in favor of the said claimant and against the United States.

2d. The claimants were legally entitled to the proceeds of the property confiscated as loyal creditors prior to the passage of the confiscation act, and the proceeds of said property so ordered to be confiscated, should have been decreed to the claimants, but was erroneously decreed to the United States in the court below.

3d. For which reasons, and many others apparent on the face of this record, the plaintiffs in error, claimants in the court below, ask that the judgment and proceedings of the court below be reversed and set aside, and that a decree be made allowing the claim of said claimant, and ordering and decreeing the payment of the same out of the proceeds of the sale of the property decreed to be confiscated in this case, all of which is submitted to the court.

54 (Signed) JOHN S. WATTS,
Att'y for McKnight and Richardson,
Claimants in the Court below.

Confiscation appeal.

THOMAS J. THOMPSON
vs.
THE UNITED STATES.

And now comes T. D. Wheaton, United States district attorney, and says there is no error in the judgment and proceedings of the court below in this case, and the same ought not to be received.

(Signed) WHEATON,
For the United States.

Confiscation appeal.

THOMAS J. THOMPSON
vs.
THE UNITED STATES.

T. D. Wheston, United States district attorney, now admits that it was proven upon the trial of this cause in the court below that said Thomas J. Thompson was a loyal citizen of the United States, residing in St. Louis, Missouri, and said fact having been admitted to

be placed in the record in this case, this admission is now signed to supply said omission.

(Signed) THEODORE D. WHEATON,
U. S. Dist. Att'y.

And be it further remembered, that on the fourth day of January, A. D. 1866, being the fourth day of said term of said court, the fol lowing proceedings were had and held, to wit:

Appeal from Dona Ana county.

55 THE PROPERTY OF SIMEON HART *et al.*
vs.
THE UNITED STATES.

And now comes Theodore D. Wheaton. esq., attorney for the United States herein, and John S. Watts, esq., attorney for the appellant, Thomas J. Thompson, and with the assent of the said John S. Watts, the said United States district attorney now moves the court for leave to withdraw his joinder in error in this cause, and for a continuance of this cause, upon the ground that the record in this cause was not filed ten days before the commencement of this court, and upon the ground that the appeal herein was not taken thirty days before the commencement of this court, and said leave to withdraw said joinder in error was refused, and the motion to continue said cause was overruled, to which opinion of the court the United States district attorney excepts.

And be it further remembered, that on the sixth day of January, A. D. 1866, being the sixth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from 3d judicial district, Dona Ana county.

THE PROPERTY OF SIMEON HART
vs.
THE UNITED STATES.

This day came again the parties by their attorneys, and the United States district attorney, T. D. Wheaton, esq., objects to the appearance of the appellant in this cause, because there was no appearance in the court below, and because the decree of that court,
56 in this cause was by default; and said objection being overruled by the court here, the said Theodore D. Wheaton, esq., attorney as aforesaid, says there is no error in the judgment of the court below in this cause, and moves this court to dismiss *to dismiss* the appeal herein, as to Simeon Hart, for the reason that it is an appeal from a decree by default, and for the reason that there was no appearance of said Simeon Hart in the court below; and said last-mentioned motion being also overruled by the court, T. D. Wheaton, esq., attorney as aforesaid, moved the court for a continuance in this cause, for the reason that the appeal in this cause was not taken thirty days before the commencement of this term as required by the

Territorial laws of New Mexico, and because the transcript of the record was not filed ten days before the first day of this term as required by said Territorial laws, and the argument of counsel being heard the said motion is overruled.

The motion to dismiss appeal in the words and figures, to wit:

In the supreme court of the Territory of New Mexico, of January term, A. D. 1866.

THE PROPERTY OF SIMEON HART
vs.
THE UNITED STATES. } Confiscation.

The United States, by her attorney, moved the court to dismiss the appeal herein as to Simeon Hart for the reason that it is an appeal from a decree by default, and for the reason that there was
57 no appearance of said Simeon Hart in the court below.

(Signed) WHEATON,
U. S. Dist. Att'y.

The motion for continuance in words and figures, to wit:

In the supreme court of the Territory of New Mexico, January term, A. D. 1866.

Appeal.

PROPERTY OF SIMEON HART
vs.
THE UNITED STATES. } Confiscation.

The United States, by the district attorney, moved the court for a continuance in this cause, for the reason that the appeal was not taken within thirty days before the first day of the term required by the Territorial laws; and second, the transcript of the record was not filed within ten days of the first day of this term of the court, as also required by the Territorial law.

(Signed) THEODORE D. WHEATON,
U. S. District Attorney.

The joinder in error in words and figures, to wit:

In the supreme court, New Mexico, January term, A. D. 1866.

SIMEON HART'S PROPERTY
vs.
THE UNITED STATES. } Confiscation.

And now comes the United States, by her attorney, and says there is no error on this record.

(Signed) WHEATON,
For the United States.

58 Be it remembered that on this sixth day of January, A. D. 1866, being the sixth day of said term of said court, John S.

Watts, esq., attorney for plaintiff, filed the within brief in error, which is in words and figures, to wit:

Brief of plaintiff in error.—Facts of the case.

Error to the 3d judicial district, Dona Ana Co.

THOMAS J. THOMPSON *vs.* THE UNITED STATES. } Confiscation.

In the year 1861, October 28th, McKnight, Richardson & Co. were doing business as merchants in El Paso or Franklin, Texas. They had $13,835 04 in specie, and at the request of Simeon Hart that amount was paid over to him, and his draft taken on Meyer & Co., of San Antonio, Texas; on the 20th of November, 1861, said draft was presented for payment, and payment refused on the ground that Hart had no funds in the hands of Meyer & Co. to meet said draft, and the bill of exchange was duly protested.

David C. Knox was afterwards employed by McKnight, Richardson & Co. to take said draft to Hart and collect said sum of 13,835 04. Knox presented to Hart said protested bill, and demanded payment, which was refused. Knox then, without authority and contrary to his instructions, gave up to Hart said bill of exchange, and took the following note therefor:

EL PASO, TEXAS, *Oct.* 28, 1861.

One day after date I promise to pay to the order of McKnight, Richardson & Co., thirteen thousand eight hundred and
59 thirty-five dollars, value received in confederate bonds or notes, if equal to cash, if not, to be made equal to cash.
(Signed) S. HART.

$13,835 04-100

McKnight & Richardson transferred this debt to Charles Bogy, a member of the firm, and Charles Bogy transferred it to the plaintiff in error, Thomas J. Thompson. A provisional government having been established for the State of Texas, and a provisional court also having duly organized at Brownsville, in said State of Texas, the said Thomas J. Thompson, on the 3d of March, 1864, filed in said court his petition setting forth the above facts and asking a judgment against said Hart for the amount due. Summons was duly issued and returned and notice of the pendency of said cause given, and at the May term of said court, 1864, a default was taken against Hart. The evidence heard and the damages assessed by a jury of $16,617 36-100, for which amount and costs, taxed at $33 60-100, judgment was rendered on the 3d day of May, 1864. Execution was duly issued, but there being no marshal or other officer in El Paso county authorized to serve said execution, no levy or sale under said execution was or could be made.

On the 23d of September, 1865, the property of Hart was libelled

for confiscation by the United States, on account of the treason of Hart and his giving aid and comfort to the rebellion, and upon the proof taken in the case a decree of confiscation was made in
60 the United States district court for the third judicial district. Pending the proceedings for confiscation of said proporty at the November term of said court, 1865, the plaintiff in error, Thomas S. Thompson, filed a claim to a sufficient amount of the proceeds of the property of Hart decreed to be confiscated to pay the amount of said judgment so obtained upon the said indebtedness of Hart to him. This claim was disallowed by court, the claim dismissed, and costs adjudged against the claimant. It is from that judgment that an appeal was taken to supreme court, and in order to reverse that judgment an appeal is now prosecuted.

Legal propositions.

1st. The act of Congress passed July 13, 1861, 12th vol., Statutes at Large, page 255, and the act of August 6, 1861, page 319, and the act of March 3d, 1863, page 762, do not affect in any manner the right of claimants to the collection of their debts under the confiscation act of July 17, 1862, (page 589,) because those acts allude only to property used in aid of the rebellion or in violation of the revenue laws of the United States.

2d. If said acts did allude to property generally taken under the confiscation act of 17th July, 1862, still a bona fide creditor, whose debt was due and owing prior to the passage of the confiscation act of July 17th, 1862, if a loyal man, had a claim which he could enforce specifically against the property of the rebel by attachment, judgment, and sale.

61 3d. If the bona fide debts due loyal citizens of the United States prior to the rebellion cannot be collected of them, then the judgment of the court below is correct. If such debts can and ought to be collected, then the judgment of the court below is erroneous, and ought to be reversed.

It is our purpose to discuss briefly this proposition:

1st. A statute should be construed in such a manner as to effect the object intended and to carry out the spirit and intent of the act. Now, the confiscation act was intended to operate upon the property of rebels, as persons civilly dead, and to constitute the United States the administrator and residuary legatee. Such being the case, it is the duty of the United States—first, cost; second, bona fide debts to loyal citizens, and confiscate the remainder as the property of the rebel. Any other construction will result in the confiscation of the bona fide claims of loyal citizens, a thing repugnant to the spirit of the law, to the obvious principles of justice and right, and never ought to be entertained. The court will take notice of the acts of the provisional court for the State of Texas, and the authentification of the record is in due form, as the court was in Texas and the property sold in Texas and jurisdiction claimed in Texas by the court. Certainly, then, a judgment rendered in that

State is well authenticated when certified by the clerk under the seal of the court. Aside from the proceedings of the court, there
62 is evidence that prior to the confiscation act Hart was indebted to McKnight, Richardson & Co. in the sum of over $13,000 for specie turned over to him, and the only thing he has ever paid for that specie is a protested draft and a note for confederate bonds or notes, which is illegal, worthless, and void, and was never received as payment or satisfaction of the debt in any manner. The whole contract, even if it had been assented to, so far as payment in confederate notes or bonds was concerned, is utterly void, and is no satisfaction of or extinguishment of a debt due for specie loaned. The claim should have been allowed in the court below, and the proceeds of the sale of the property confiscated should have been ordered or decreed to be paid to claimant to the extent of his claim.

All of which is respectfully submitted.

(Signed) JOHN S. WATTS,
Attorney for Claimant and Plaintiff in Appeal.

Be it further remembered, that on the sixth day of January, A. D. 1866, being the sixth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

THE PROPERTY OF SIMEON HART, appellant,
vs.
THE UNITED STATES, appellee.

And now on this day came the parties, by their counsel, and submit this cause to the court, for its judgment and decree, without argument.

Therefore, in consideration of the premises, it is ordered, adjudged, and decreed by the court that the judgment and decree in the
63 court below be, and hereby is, reversed and annulled, and this cause be remanded to the district court for the county of Dona Ana, to be by the said court dismissed for the want of jurisdiction in said court over the real estate in the county of El Paso, Texas, libelled in this cause, at the costs of the United States in the district court and in this court.

The judgment of the court was announced by Benedict, chief justice, Justice Houghton dissenting.

Leave is hereby given each of the judges to file their separate written opinions in this case, during the present term or in vacation.

(Signed) KIRBY BENEDICT.
(Signed) SYDNEY A. HUBBELL.
(Signed) J. HOUGHTON.

Be it further remembered, that on this 16th day of January, A. D. 1866, being the sixteenth day of said term of said court, the following proceedings were had and held, to wit:

Appeal from Dona Ana county.

THE PROPERTY OF SIMEON HART, appellant,
vs.
THE UNITED STATES, appellee.

And now comes Theodore D. Wheaton, esq., United States district attorney; and files an affidavit herein showing the property in controversy in this cause to be of value exceeding one thousand dollars, and therefore prays an appeal to the Supreme Court of the United States; which appeal is hereby granted.

64 The affidavit in words and figures as follows, to wit:

Appeal.

In the supreme court New Mexico, January term, A. D. 1866.

THE PROPERTY OF SIMEON HART
vs.
THE UNITED STATES. } Confiscation.

Affidavit of John F. Stone:

States that the property in question in the above-named cause exceeds the value of one thousand dollars, to wit, is of the value of about eight thousand dollars.

(Signed) JOHN F. STONE.

Sworn to and subscribed in open court January 16, 1866.

(Signed) KIRBY BENEDICT,
Chief Justice of said Territory, and Presiding Judge of said Court.

I, William M. Gwynne, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing pages is a true, perfect, and exact transcript of the entries made in the record of the said court in the above-entitled cause, as remains of record in said court, which said record is now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Santa Fe, this 13th day of August, A. D. 1866.

[SEAL.] W. M. GWYNNE, *Clerk.*

Supreme Court of the United States.

DECEMBER TERM, 1867.

No. 122.

THE UNITED STATES, *Appellants*,

vs.

SIMEON HART.

Appeal from the Supreme Court of the Territory of New Mexico.

PLEA OF PARDON.

And now comes the said appellee, Simeon Hart, a loyal citizen of the United States, and, also, a citizen of the State of Texas, and by leave of this Honorable Court, pleads and relies upon a full Pardon granted to him, on the 3d day of November, A. D., 1865, by Andrew Johnson, President of the United States of America, which said pardon is here to the Court shown, and which is under the great seal of the United States, and is in the words and figures following, to-wit:

"*Andrew Johnson, President of the United States of America, to all to whom these presents shall come, greeting:*

"Whereas, Simeon Hart, of El Paso, Texas, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties;

"And whereas, the circumstances of his case render him a proper object of Executive clemency;

"Now, therefore, be it known, that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Simeon Hart, a full pardon and amnesty for all offences by him committed, arising from participation, direct or implied, in the said rebellion, conditioned as follows:

"1st. This pardon to be of no effect, until the said Simeon Hart shall take the oath prescribed in the Proclamation of the President, dated May 29th, 1865.

"2d. To be void and of no effect if the said Simeon Hart shall hereafter, at any time, acquire any property whatever in slaves, or make use of slave labor.

"3d. That the said Simeon Hart first pay all costs which may have accrued in any proceedings instituted or pending against his person or property, before the date of the acceptance of this warrant.

"4th. That the said Simeon Hart shall not, by virtue of this warrant, claim any property or the proceeds of any property that has been sold by the order, judgment, or decree of a court under the confiscation laws of the United States.

"5th. That the said Simeon Hart shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

"In testimony whereof, I have hereunto signed my name and caused the seal of the United States to be affixed.

"Done at the City of Washington, this Third day of November, A. D., 1865, and of the Independence of the United States the Ninetieth.

[L. S.] "ANDREW JOHNSON."

"By the President:

"WILLIAW H. SEWARD,

Secretary of State."

Which said warrant of pardon was duly delivered to this appellee, and accepted by him; and the several conditions annexed thereto, have been complied with by this appellee. And this appellee brings into Court here, and makes profert herewith of the certificate of the Secretary of State, whereby it appears that this appellee has taken, and deposited in the Department of State, the oath prescribed in the Proclamation of the President, dated May 29, 1865, in compliance with the requirements of the said pardon. He, likewise, brings into Court here, and makes profert herewith of a copy of his notification, in writing, to the Secretary of State, of his receipt and acceptance of the pardon aforesaid, duly certified by the Secretary of State. And this appellee avers that in all acts, facts and things to be performed or omitted, according to the command and conditions of the said pardon, he has fully executed and performed the same, and that the said pardon is now in full force and effect, unrecalled and unrevoked, and not forfeited by any breach of any of the terms or conditions thereof.

Wherefore, he pleads and relies on the said pardon, in this cause, and thereupon prays the judgment of this Honorable Court.

ROBERT LEECH,

For Appellee.